IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3397 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAIN CITIZENS EDUCATION SOCIETY & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

NANAVATI & NANAVATI for Petitioner(s) : 1 - 2.
MR MR MENGDEY, AGP for Respondent(s) : 1 - 2.
MR AD OZA for Respondent(s) : 3,
MR RM DESAI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/12/2006

ORAL JUDGMENT

1. In this petition, the petitioner school management has challenged the action on part of

the State Government in seeking to cause recovery of Rs. 19,81,000/- from the petitioners pursuant to order at Annexure-A dated 25th March, 1998.

2. In brief the facts leading to the petition are that the petitioner no.1 trust is running a Secondary School in Surendranagar. The school is duly recognised by the State Government as well as the Secondary Board as an English medium school. Sometime in the year 1977, the petitioners sought for and were granted permission to add two classes to the existing school which classes were meant for imparting education in Gujarati medium. The additional classes were also made grantable as was the school itself. The petitioners received full grant from the Government for these additional classes as well and the salary of teaching as well as non teaching staff was made through such grant. It was not in dispute that sufficient number of students were enrolled for these classes and fees collected was also on the basis that the school has been receiving grant from the Government and is thus grant in aid school.

3. It appears that additional classes though were meant for imparting education in Gujarati medium and the parent school was itself registered as an English medium school, no such separate permission to register these classes as

independent Gujarati medium school was granted. Thus, indisputably, fact remains that these additional classes for all practical purposes, by the petitioners as well as the respondents, were treated as addition to the existing school and not as an independent separate Gujarati medium school.

4. Having paid grant for the additional classes for years together, the respondents had some doubt about the payability of such grant primarily on the ground that additional classes did not enjoy separate registration and recognition as Gujarati medium school. Such doubt initiated on account of audit objection raised by the Audit Department of the State Government through its audit note raised in December, 1990. Apparently, the Audit Department was of the opinion that since the petitioner did not have separate recognition and registration for its additional classes as an independent Gujarati medium school, no grant could have been paid by the Government for such classes.

5. Even after the audit note raising objection to payment of grant to the said classes, apparently, no action was taken by the Government for another eight years thereafter. By order dated 25th March, 1998 as at Annexure-A to the petition, the District Education Officer, Surendranagar District, directed the petitioners

to refund a sum of Rs. 19,81,000/- as overpayment of grants for the entire period from 1978 to March 1998. It may be noted that before passing the said summary order, no hearing or any other form of opportunity was granted to the petitioners to represent their case. It is this order passed by the respondents that the petitioners have challenged in this petition.

6. Appearing for the petitioners learned advocate Shri Saurin Mehta submitted that the order is illegal and unlawful. He contended that same is passed without giving any hearing to the petitioners. He contended that recovery of alleged overpayment is sought to be made after a gap of nearly 20 years since starting of payment of grant. He also contended that solely on the basis of audit objection, recovery could not have been effected without proper application of mind. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in the case of State of Bihar and others v/s. Industrial Corporation(P) Ltd. and others reported in (2003) 11 Supreme Court Cases 465. It was also contended that admittedly, the classes have successfully run during the entire period, education to sufficient number of students granted, salary to teaching and non teaching staff paid from the grant released by the Government and subsidized fee collected from the students and fee so collected also deposited

with the Government as per the rules. He therefore, submitted that it would not be therefore, appropriate to permit the Government to seek recovery of the so called unauthorised payment of grant. He submitted that even after passing the impugned order, the Government has been paying grant for the additional classes.

7. Having made these submissions, learned counsel submitted that the petitioners continued to be entitled to receive grant for the additional classes, treating such classes as additional classes and if there is any adjustment to be made on account of Government having released the grant treating these additional classes as a separate Gujarati medium school, the petitioners to such extent would not oppose adjustment/recovery of the grant already paid. He sought to place on record a communication dated 1-3/3/1993 from District Education Officer, Surendranagar District to the Audit Department of the State wherein it is pointed out that actual recovery for the entire period would come to not more than Rs.1,31,171/-. This communication is ordered to be taken on record. Counsel further submitted that in fact, the opponents have recovered large amount than what is indicated by the District Education Officer in his above mentioned communication dated 1-3/3/1993.

8. Learned AGP Shri Mengdey on the other hand opposed the petition. He submitted that the impugned order is just and proper and calls for no interference. He was however, unable to dispute the contention of learned counsel for the petitioners that the audit objection is based on dis-entitling the petitioners from receiving any grant whatsoever for its additional classes on the ground that such classes have not been registered as a separate school. Under the instructions of Shri S.P. Rajshaka, from Government Department, he stated that after passing of the impugned order Annexure-A also, the school has been receiving grant for its additional classes.

9. Having heard learned advocates appearing for the parties what emerges is that the petitioners received grant for its additional classes right from the year 1978 when the classes were added to the existing school till 1998, but all of a sudden, the Government sought to recover entire grant from the petitioners on the basis of audit objection suggesting that such grant was not payable at all. It is amply clear that for the entire period, classes were permitted to function by the Government authorities. The petitioners had engaged teaching and non teaching staff to impart education in such classes and students were also enrolled. At no stage, any objection for running of such classes

was raised. Seeking recovery of grants released in its entirety, therefore, under no circumstances can be countenanced. Additionally, I am also influenced by the fact that subsequent to passing of the impugned order in the year 1998, all the classes were continued to be operated. Considering all these aspects of the matter, recovery sought to be made through the impugned order as at Annexure-A to the petition cannot be permitted.

10. There is however, some justification in the opponents urging that petitioners were not entitled to receive grant for the additional classes on the basis as if they are registered as an independent school which in fact was not the case. Therefore, if there is any difference of payability of grant between two additional classes actually operated by the petitioners during the entire period and independent separately registered school, to the extent of difference, the petitioners will have to suffer adjustment/recovery. As noted earlier, contention of the petitioners is that such recovery does not exceed Rs. 1,31,171/- as indicated by District Education Officer in his communication dated 1-3/3/1993. For want of sufficient particulars, it is not possible for this Court to conclude this issue in this petition. Suffice it to say, it would be open for the Government to inquire into this aspect

of the matter and pass fresh order giving brief reasons thereof in accordance with law after permitting the petitioners to place on record such material as they may desire. This will also take care of angle of principles of natural justice and the grievance of the petitioners that no hearing was granted before passing the impugned order of recovery. The question of further recovery/refund from a portion of the amount already recovered as stated by the learned counsel for the petitioners, will be covered by such fresh orders which may be passed expeditiously. Ordinarily there would also have been question of gross delay in seeking the recovery. However, since it is stated that to the extent, grant is actually overpaid, the petitioners would be agreeable to have the same adjusted, I have not considered the said question in this litigation.

11. With these directions, order as at Annexure-A to the petition is quashed. Rule is made absolute. The petition stands disposed of accordingly.

(Akil Kureshi, J.)

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